

808 KAR 10:360. Safe harbor for limited liability company membership interests.

RELATES TO: KRS 292.310(19)

STATUTORY AUTHORITY: KRS 292.400(14), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. This administrative regulation establishes a safe harbor for membership interests in a limited liability company. If a membership interest meets the criteria of the safe harbor, the interest shall not be considered an investment contract within the definition of security, and therefore, shall not be subject to the provisions of the Securities Act of Kentucky, KRS Chapter 292.

Section 1. A membership interest in a limited liability company shall not be considered an investment contract, if the aggregate number of members of the limited liability company, after all membership interests are sold, does not exceed thirty-five (35) and at least one (1) of the following requirements are met:

- (1) Each member of the limited liability company is actively engaged in the management of the limited liability company;
- (2) The articles of organization or operating agreement of the limited liability company vest management of the limited liability company in a manager who is a member and the articles or operating agreement provide that the managing member may be replaced by any other member, by an affirmative vote of a simple majority of all members; or
- (3) Each member is authorized to act for and bind the limited liability company under applicable law or under the articles of organization or operating agreement of the limited liability company.

Section 2. In determining if the criteria set forth in Section 1(1) of this administrative regulation are met, evidence that members vote or have the right to vote, have the right to information concerning the business and affairs of the limited liability company, or have the right to participate in the management of the limited liability company, shall not alone establish that all members are actively engaged in the management of the limited liability company. (8 Ky.R. 579; eff. 3-1-1982; Am. 24 Ky.R. 2185; 25 Ky.R. 91; eff. 6-25-98; 32 Ky.R. 1484; 1892; eff. 5-5-2006; TAm eff. 11-7-2012; Crt eff. 2-27-2020.)